

<b>TO:                      Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court                      Northern District of Ohio                      on the following

☐ Trademarks or    ☒ Patents.    ( ☐ the patent action involves 35 U.S.C. § 292.);

DOCKET NO. <b>SEE ATTACHMENT</b>	DATE FILED	U.S. DISTRICT COURT <b>Northern District of Ohio</b>
PLAINTIFF		DEFENDANT
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 <b>6,983,495</b>		
2 <b>6,997,082</b>		
3 <b>7,302,716</b>		
4 <b>7,441,289</b>		
5 <b>7,040,637</b>		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 <b>D 480,995</b>		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT  <b>SEE ATTACHED FOR PATENT CASE TERMINATION INFORMATION</b>
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CLERK <b>Geri M. Smith</b>	(BY) DEPUTY CLERK <b>Carlene Kinsey</b>	DATE <b>4/18/2011</b>
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

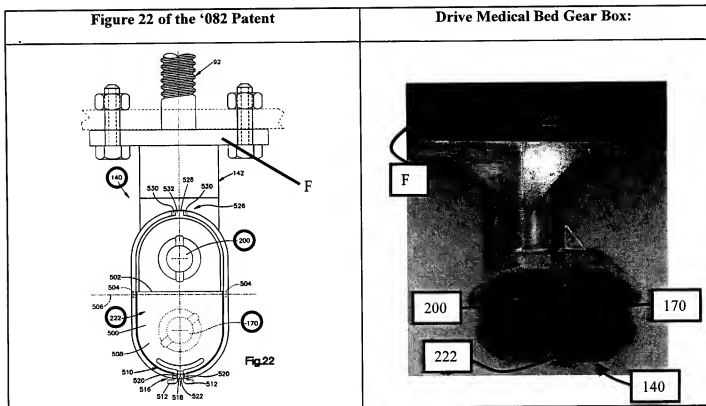


Figure 22 illustrates a gearbox 140 fixed to a bed frame cross bar F. The gearbox 140 has a first input shaft with an end portion 170, and a second input shaft with an end portion 200. A cover 222 pivots between two positions to cover one of the two end portions 170 or 200. As can be seen from the Drive Medical bed gear box, it is substantially the same as Figure 22 except that it has a horizontal orientation rather than a vertical orientation, as can be seen from the reference numerals. The '082 patent claims are not limited to any particular orientation and, thus, cover vertical, horizontal, and other orientations.

24. Drive Medical is also actively inducing others to infringe the '082 patent, and is contributing to infringement of the '082 patent by others, through its actions in using, having used, offering to sell, selling, having sold, importing, having imported, and marketing the Accused Drive Medical Beds in the United States.

25. Drive Medical has had at least constructive notice of Invacare's rights under the '082 patent by virtue of Invacare's universal bed products being marked with '082 patent number.

26. Drive Medical's acts of infringement are willful, wanton, deliberate, without license, and with full knowledge and awareness of the '082 patent. As a result, Invacare has suffered and will continue to suffer irreparable harm, and this irreparable harm will continue unless Drive Medical's infringing activities are enjoined during this Action and thereafter.

27. The harm to Invacare within this judicial district and elsewhere in the United States resulting from the acts of infringement of the '082 patent by Drive Medical set forth above is irreparable, continuing, and not fully compensable by money damages.

28. Upon information and belief, Drive Medical has profited from and will continue to profit from its infringing activities. Invacare has been and will be damaged by Drive Medical's infringing activities. The amount of monetary damages which Invacare has suffered by the acts of Drive Medical set forth above cannot be determined without an accounting.

29. Drive Medical's willful infringing activities relating to the Accused Drive Medical Beds complained of herein make this an exceptional case entitling Invacare to the recovery of its reasonable attorneys' fees under 35 U.S.C. § 285 or other applicable law and the trebling of damages for willful infringement under 35 U.S.C. § 284.

**COUNT 3**  
**(Infringement of U.S. Patent No. 7,302,716)**

30. Invacare incorporates by reference all averments set forth in the paragraphs above as if fully rewritten herein.

31. On December 4, 2007, United States Patent No. 7,302,716 for "Adjustable Bed" ("the '716 patent") was duly and legally issued by the U.S. Patent and Trademark Office. A true

and correct copy of the '716 patent is attached hereto as Exhibit C. By assignment from the inventors in March and April of 2004, Invacare is the sole owner of the '716 patent. The assignment has been recorded with the U.S. Patent and Trademark Office at Reel/Frame 015230/0397..

32. Drive Medical has been infringing, is infringing, and unless enjoined will continue to infringe the '716 patent by using, having used, offering to sell, selling, having sold, importing, and having imported the Accused Drive Medical Beds (as defined above) in the United States. The Accused Drive Medical Beds fall within the scope of one or more claims in the '716 patent. These actions therefore constitute direct infringement of the '716 patent.

33. Indeed, the Accused Drive Medical Beds are a direct copy of the '716 patent, as can be seen for example from the comparison above between Figure 7 of the '495 patent and the universal bed ends used in each of the Accused Drive Medical Beds. The '716 patent also has the same Figure 22 and corresponding written description as in the '082 patent, which are reproduced and discussed above. (*See* ¶¶ 13 and 23 *supra*).

34. Drive Medical is also actively inducing others to infringe the '716 patent, and is contributing to infringement of the '716 patent by others, through its actions in using, having used, offering to sell, selling, having sold, importing, having imported, and marketing the Accused Drive Medical Beds in the United States.

35. Upon information and belief, Drive Medical's acts of infringement are willful, wanton, deliberate, without license, and with full knowledge and awareness of the '716 patent. As a result, Invacare has suffered and will continue to suffer irreparable harm, and this irreparable harm will continue unless Drive Medical's infringing activities are enjoined during this Action and thereafter.

36. The harm to Invacare within this judicial district and elsewhere in the United States resulting from the acts of infringement of the '716 patent by Drive Medical set forth above is irreparable, continuing, and not fully compensable by money damages.

37. Upon information and belief, Drive Medical has profited from and will continue to profit from its infringing activities. Invacare has been and will be damaged by Drive Medical's infringing activities. The amount of monetary damages which Invacare has suffered by the acts of Drive Medical set forth above cannot be determined without an accounting.

38. Drive Medical's infringing activities relating to the Accused Drive Medical Beds complained of herein make this an exceptional case entitling Invacare to the recovery of its reasonable attorneys' fees under 35 U.S.C. § 285 or other applicable law and to the trebling of damages for willful infringement under 35 U.S.C. § 284.

**COUNT 4**  
**(Infringement of U.S. Patent No. 7,441,289)**

39. Invacare incorporates by reference all averments set forth in the paragraphs above as if fully rewritten herein.

40. On October 28, 2008, United States Patent No. 7,441,289 for "Slip Nut Assembly for Adjustable Height Bed" ("the '289 patent") was duly and legally issued by the U.S. Patent and Trademark Office. A true and correct copy of the '289 patent is attached hereto as Exhibit D. By assignment from the inventor in June of 2004, Invacare is the sole owner of the '289 patent. The assignment has been recorded against the '289 patent with the U.S. Patent and Trademark Office at Reel/Frame 015459/0098.

41. Drive Medical has been infringing, is infringing, and unless enjoined will continue to infringe the '289 patent by using, having used, offering to sell, selling, having sold, importing, and having imported the Accused Drive Medical Beds (as defined above) in the

United States. The Accused Drive Medical Beds fall within the scope of one or more claims in the '289 patent. These actions therefore constitute direct infringement of the '289 patent.

42. Drive Medical is also actively inducing others to infringe the '289 patent, and is contributing to infringement of the '289 patent by others, through its actions in using, having used, offering to sell, selling, having sold, importing, having imported, and marketing the Accused Drive Medical Beds in the United States.

43. Upon information and belief, Drive Medical's acts of infringement are willful, wanton, deliberate, without license, and with full knowledge and awareness of the '289 patent. As a result, Invacare has suffered and will continue to suffer irreparable harm, and this irreparable harm will continue unless Drive Medical's infringing activities are enjoined during this Action and thereafter.

44. The harm to Invacare within this judicial district and elsewhere in the United States resulting from the acts of infringement of the '289 patent by Drive Medical set forth above is irreparable, continuing, and not fully compensable by money damages.

45. Upon information and belief, Drive Medical has profited from and will continue to profit from its infringing activities. Invacare has been and will be damaged by Drive Medical's infringing activities. The amount of monetary damages which Invacare has suffered by the acts of Drive Medical set forth above cannot be determined without an accounting.

46. Drive Medical's infringing activities relating to the Accused Drive Medical Beds complained of herein make this an exceptional case entitling Invacare to the recovery of its reasonable attorneys' fees under 35 U.S.C. § 285 or other applicable law and to the trebling of damages for willful infringement under 35 U.S.C. § 284.

**COUNT 5**  
**(Infringement of U.S. Patent No. 7,040,637)**

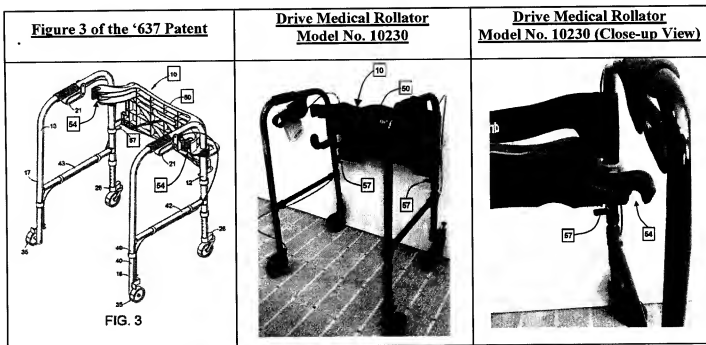
47. Invacare incorporates by reference all averments set forth in paragraphs 1-8 above as if fully rewritten herein.

48. On May 9, 2006, United States Patent No. 7,040,637 for “Inwardly Folding Rollator with an Upwardly Pivotal Seat” (“the ‘637 patent”) was duly and legally issued by the U.S. Patent and Trademark Office. A true and correct copy of the ‘637 patent is attached hereto as Exhibit E. By assignments from the inventors, Invacare is the sole owner of the ‘637 patent. These assignments have been recorded against the ‘637 patent with the U.S. Patent and Trademark Office at Reel/Frame 012604/0527 and 015911/0465.

49. Drive Medical uses, has used, offers to sell, sells, has sold, imports, and has imported in the United States a rollator called the Clever-Lite Walker (including, but not limited to, Model No. 10230) and variants thereof such as, for example, the Clever-Lite LS Walker (including, but not limited to, Model No. 10233). These Drive Medical products and related rollators are collectively referred to herein as the “Accused Drive Medical Rollators.”

50. Drive Medical has been infringing, is infringing, and unless enjoined will continue to infringe the ‘637 patent by using, having used, offering to sell, selling, having sold, importing, and having imported the Accused Drive Medical Rollators in the United States. The Accused Drive Medical Rollators fall within the scope of one or more claims in the ‘637 patent. These actions therefore constitute direct infringement of the ‘637 patent.

51. Indeed, the Accused Drive Medical Rollators are a direct copy of the ‘637 patent, as can be seen for example from the following comparison between Figure 3 of the ‘637 patent and the Accused Drive Medical Rollators.



For example, Figure 3 of the '637 patent shows an ambulatory device with a seating structure 50 having support brackets that include notches 54. Figure 3 also shows an ambulatory device having support flanges 57 that are connected to the side frames of the device and have the capability of supporting the seat 50 when it is lowered. As shown in the above figures, these exemplary structural details are easily recognizable in the Accused Drive Medical Rollators, as identified by the same reference numerals.

52. Drive Medical is also actively inducing others to infringe the '637 patent, and is contributing to infringement of the '637 patent by others, through its actions in using, having used, offering to sell, selling, having sold, importing, having imported, and marketing the Accused Drive Medical Rollators in the United States.

53. Drive Medical's acts of infringement are willful, wanton, deliberate, without license, and with full knowledge and awareness of the '637 patent. The '637 patent issued on May 9, 2006 and Invacare gave Drive Medical actual notice of the '637 patent shortly thereafter in mid-May of 2006. Drive Medical's willful infringement has continued unabated and, as a



result, Invacare has suffered and will continue to suffer irreparable harm, and this irreparable harm will continue unless Drive Medical's willful infringing activities are enjoined during this Action and thereafter.

54. The harm to Invacare within this judicial district and elsewhere in the United States resulting from the acts of infringement of the '637 patent by Drive Medical set forth above is irreparable, continuing, and not fully compensable by money damages.

55. Upon information and belief, Drive Medical has profited from and will continue to profit from its infringing activities. Invacare has been and will be damaged by Drive Medical's infringing activities. The amount of monetary damages which Invacare has suffered by the acts of Drive Medical set forth above cannot be determined without an accounting.

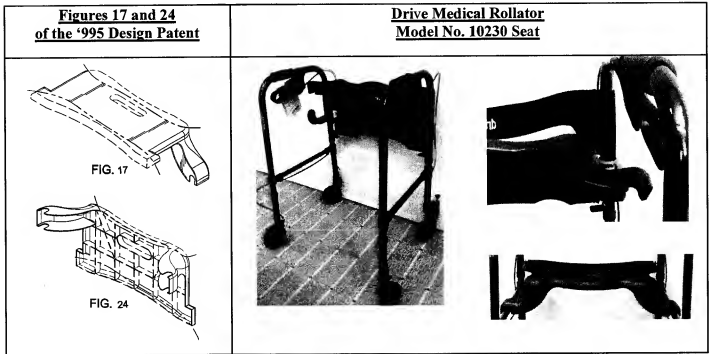
56. Drive Medical's infringing activities relating to the Accused Drive Medical Rollators complained of herein make this an exceptional case entitling Invacare to the recovery of its reasonable attorneys' fees under 35 U.S.C. § 285 or other applicable law and to trebling of damages for willful infringement under 35 U.S.C. § 284.

**COUNT 6**  
**(Infringement of U.S. Design Patent No. D 480,995)**

57. Invacare incorporates by reference all averments set forth in paragraphs 1-8 and 50-59 above as if fully rewritten herein.

58. On October 21, 2003, United States Design Patent No. D 480,995 for "Seat for an Ambulatory Device" ("the '995 design patent") was duly and legally issued by the U.S. Patent and Trademark Office. A true and correct copy of the '995 design patent is attached hereto as Exhibit F. By assignment from the inventor, Invacare is the sole owner of the '995 design patent. This assignment has been recorded against the '995 design patent with the U.S. Patent and Trademark Office at Reel/Frame 013613/0626.

59. Drive Medical has been infringing, is infringing, and unless enjoined will continue to infringe the '995 design patent by using, having used, offering to sell, selling, having sold, importing, and having imported the Accused Drive Medical Rollators (as defined above) in the United States. The Accused Drive Medical Rollators fall within the scope of the claim in the '995 design patent. These actions therefore constitute direct infringement of the '995 design patent. This can be seen for example from the following comparison between Figures 17 and 24 of the '995 design patent and the seat of the Accused Drive Medical Rollators.



60. Drive Medical is also actively inducing others to infringe the '995 design patent, and is contributing to infringement of the '995 design patent by others, through its actions in using, having used, offering to sell, selling, having sold, importing, having imported, and marketing the Accused Drive Medical Rollators in the United States.

61. Upon information and belief, Drive Medical's acts of infringement are willful, wanton, deliberate, without license, and with full knowledge and awareness of the '995 design

patent. As a result, Invacare has suffered and will continue to suffer irreparable harm, and this irreparable harm will continue unless Drive Medical's willful infringing activities are enjoined during this Action and thereafter.

62. The harm to Invacare within this judicial district and elsewhere in the United States resulting from the acts of infringement of the '995 design patent by Drive Medical set forth above is irreparable, continuing, and not fully compensable by money damages.

63. Upon information and belief, Drive Medical has profited from and will continue to profit from its infringing activities. Invacare has been and will be damaged by Drive Medical's infringing activities. The amount of monetary damages which Invacare has suffered by the acts of Drive Medical set forth above cannot be determined without an accounting.

64. Drive Medical's infringing activities relating to the Accused Drive Medical Rollators complained of herein make this an exceptional case entitling Invacare to the recovery of its reasonable attorneys' fees under 35 U.S.C. § 285 or other applicable law and to trebling of damages for willful infringement under 35 U.S.C. § 284.

**NORTHERN DISTRICT OF OHIO  
PATENT CASE CLOSINGS**

**03/29/2011 TO 03/31/2011**

**Judge: Oliver, Solomon**

Case Number	NOS	Cause	Case Title	Filed	Term.	Category	Day/Pend
1:09-cv-01677-SO	830	35:0271	Invacare Corporation v. Medical Depot, Inc.	7/21/09	3/31/11	Cat07	618

**Total Cases: 1**

Category 01 - 0	Category 07 - 1
Category 02 - 0	Category 08 - 0
Category 03 - 0	Category 09 - 0
Category 04 - 0	Category 10 - 0
Category 05 - 0	Category 11 - 0
Category 06 - 0	Category 12 - 0
	Category 13 - 0

**DEMAND FOR JUDGMENT**

WHEREFORE, Invacare demands judgment that:

- (a) Drive Medical has directly infringed the '495 patent, the '082 patent, the '716 patent, the '289 patent, the '637 patent, and the '995 design patent;
- (b) Drive Medical has induced infringement of the '495 patent, the '082 patent, the '716 patent, the '289 patent, the '637 patent, and the '995 design patent by others;
- (c) Drive Medical has contributed to the infringement of the '495 patent, the '082 patent, the '716 patent, the '289 patent, the '637 patent, and the '995 design patent by others;
- (d) finds the '495 patent, the '082 patent, the '716 patent, the '289 patent, the '637 patent, and the '995 design patent are not invalid and are not unenforceable;
- (e) Drive Medical, its directors, officers, agents, servants, employees, attorneys and any and all other persons in active concert or participation with Drive Medical, who receive actual notice of the Order by personal service or otherwise, be preliminarily and permanently enjoined from infringing (through direct, contribution, inducement, or otherwise) the '495 patent, the '082 patent, the '716 patent, the '289 patent, the '637 patent, and the '995 design patent.
- (f) Drive Medical shall destroy all existing inventory of products infringing upon Invacare's rights, as well as the related tooling used to make the products;
- (g) Drive Medical shall destroy all marketing, advertising, promotional and sales material which reflect products infringing upon Invacare's rights;
- (h) awards Invacare its damages incurred as a result of Drive Medical's unlawful acts described herein together with legal interest from the date of accrual thereof;

- (i) finds Drive Medical's patent infringement is willful and increases the award of damages for patent infringement to three times the amount otherwise found or assessed, under 35 U.S.C. § 284;
- (j) finds this Action is exceptional and awards Invacare its reasonable attorneys' fees incurred in this Action, pursuant to 35 U.S.C. § 285;
- (k) awards an assessment of costs against Drive Medical; and
- (l) provides such other and further relief as this Court deems just and equitable.

July 21, 2009

Respectfully submitted,

/s/ George R. Hoskins

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**Attorneys for Plaintiff Invacare Corporation**

**PLAINTIFF'S DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Invacare hereby demands a jury trial on all issues triable by a jury.

July 21, 2009

Respectfully submitted,

/s/ George R. Hoskins

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**Attorneys for Plaintiff Invacare Corporation**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

INVACARE CORPORATION,	)	CASE NO. 1:09-cv-01677
	)	
Plaintiff,	)	JUDGE SOLOMON OLIVER, JR.
	)	
v.	)	
	)	MAGISTRATE JUDGE
MEDICAL DEPOT, INC., d/b/a DRIVE	)	WILLIAM H. BAUGHMAN, JR.
MEDICAL DESIGN AND MANUFACTURING,	)	
	)	
Defendant.	)	
	)	
-----	)	
MEDICAL DEPOT, INC., d/b/a DRIVE	)	
MEDICAL DESIGN AND MANUFACTURING,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
PROFESSIONAL MEDICAL IMPORTS, and	)	
JOHN DOES Nos. 1-100,	)	
	)	
Third-Party Defendants.	)	

**STIPULATION OF DISMISSAL**

This matter is before the Court on the joint motion of the parties for a Stipulation of Dismissal. Having considered this matter, the court grants the motion.

**IT IS HEREBY ORDERED:**

1. That the Court shall retain jurisdiction over the terms of this action in order to enforce the terms of the Settlement Agreement of March 28, 2011 between the parties.
2. This action is dismissed with prejudice as to all claims, counterclaims, and third-party claims.
3. The parties shall bear their respective costs and attorney's fees.



Dated: March 31, 2011

/s/SOLOMON OLIVER, JR.  
Chief Judge  
United States District Court

Respectfully submitted,

\_\_\_\_\_/s/ Charles S. Baker\_\_\_\_\_  
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*Attorneys for Defendant/Counterclaim  
Plaintiff/Third-Party Plaintiff Medical  
Depot, Inc d/b/a Drive Medical Design  
and Manufacturing*

Respectfully submitted,

\_\_\_\_\_/s/ Ned Pejic\_\_\_\_\_  
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*Attorneys for Plaintiff Invacare  
Corporation*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**INVACARE CORPORATION**

One Invacare Way  
Elyria, Ohio 44035,

Plaintiff,

vs.

**MEDICAL DEPOT, INC., d/b/a DRIVE  
MEDICAL DESIGN AND  
MANUFACTURING**

99 Seaview Boulevard  
Port Washington, New York 11050,

Defendant.

) CASE NO.

) JUDGE

) COMPLAINT FOR  
) PATENT INFRINGEMENT  
) DEMAND FOR JURY TRIAL

Plaintiff Invacare Corporation ("Invacare") hereby files this Complaint against Defendant Medical Depot, Inc. d/b/a Drive Medical Design and Manufacturing ("Drive Medical"), and complains and avers as follows:

1. This is an action for injunctive and monetary relief to remedy patent infringement by Drive Medical of multiple utility and design patents assigned to and owned by Invacare. The inventions at issue involve height-adjustable bed ends and beds as well as rollator mobility aids. The infringed Invacare patents include U.S. Patent Nos. 6,983,495 (Exhibit A hereto), 6,997,082

(Exhibit B hereto), 7,302,716 (Exhibit C hereto), 7,441,289 (Exhibit D hereto), 7,040,637 (Exhibit E hereto), and Des. 480,995 (Exhibit F hereto).

### **THE PARTIES**

2. Plaintiff Invacare Corporation (“Invacare”) is a corporation existing under the laws of the State of Ohio, with a principal place of business at One Invacare Way, Elyria, Ohio 44035. Invacare makes and sells durable medical products including height-adjustable beds and related components, such as height-adjustable bed ends, as well as rollator mobility aids.

3. Defendant Medical Depot, Inc. d/b/a Drive Medical Design and Manufacturing is a corporation existing under the laws of the State of Delaware, with a principal place of business at 99 Seaview Boulevard, Port Washington, New York 11050. Drive Medical makes, uses, has used, imports, sells, has sold, imports and has imported durable medical products including height-adjustable beds and related components, such as height-adjustable bed ends, as well as rollator mobility aids.

4. Invacare and Drive Medical are direct competitors in several durable medical product lines, including height-adjustable beds and related components, such as bed ends, as well as rollator mobility aids.

### **JURISDICTION AND VENUE**

5. This Court has original subject matter jurisdiction over this controversy concerning patent infringement pursuant to 28 U.S.C. §§ 1331 & 1338(a), and 35 U.S.C. §§ 271 & 281.

6. This Court has personal jurisdiction over Drive Medical pursuant to the provisions of the Ohio Long Arm Statute, O.R.C. § 2307.382, and the laws of the United States.

7. Drive Medical regularly solicits business and maintains a persistent course of conduct by conducting business in the Northern District of Ohio. Drive Medical also maintains

an established distribution network for offering for sale, selling and shipping products into the Northern District of Ohio, including Drive Medical's complete line of height-adjustable beds and related components such as bed ends, and rollator mobility aids. As of July 20, 2009, Drive Medical's website at <https://drivemedical.com/catalog/dealer-locator.php?mode=advanced> (Exhibit G hereto) identified 21 dealers in the Cleveland, Ohio area alone as dealing in Drive Medical's products. The marketing and sale of the products at issue in this Action will directly infringe and induce or contribute to the infringement of Invacare's patent rights within this State and elsewhere in the United States. Also, Drive Medical's conduct as described herein will cause tortious injury to Invacare, a resident of this state, and permit Drive Medical to wrongfully derive substantial revenue from activities within this state. Upon information and belief, Drive Medical derives substantial revenue from activities within this state and has sold a substantial amount of products into this state.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

**ACCUSED DRIVE MEDICAL BEDS**

9. Drive Medical uses, has used, offers to sell, sells, has sold, imports and has imported in the United States the following beds:

- Model No. 15030 and variants thereof called the Ultra Light Plus Semi-Electric Bed;
- Model No. 15033 and variants thereof called the Ultra Light Plus Full-Electric Bed;
- Model No. 15230 and variants thereof called the Ultra Light Plus Semi-Electric Low Bed; and
- Model No. 15235 and variants thereof called the Ultra Light Plus Full-Electric Low Bed.

These Drive Medical bed models, and any related Drive bed models, and replacement universal bed ends and parts, are collectively referred to herein as the "Accused Drive Medical Beds."

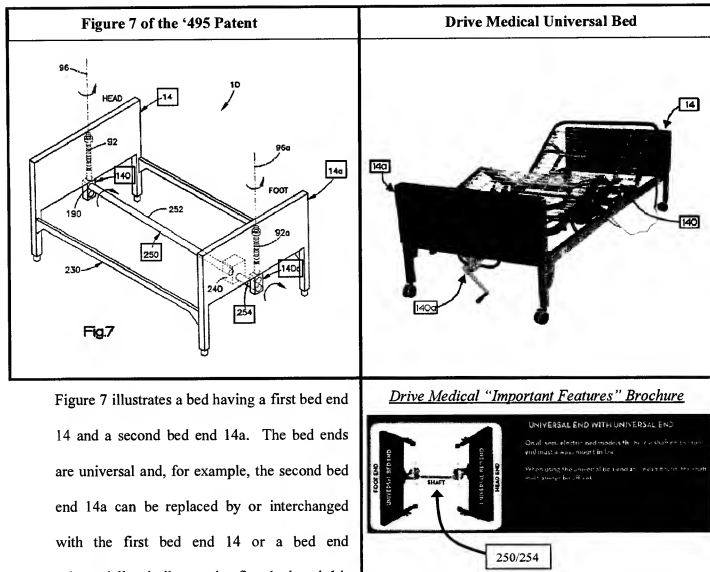
**COUNT 1**  
**(Infringement of U.S. Patent No. 6,983,495)**

10. Invacare incorporates by reference all averments set forth in the paragraphs above as if fully rewritten herein.

11. On January 10, 2006, United States Patent No. 6,983,495 for “Adjustable Height Bed” (“the ‘495 patent”) was duly and legally issued by the U.S. Patent and Trademark Office. A true and correct copy of the ‘495 patent is attached hereto as Exhibit A. By assignment from the inventors in February and March of 2003, Invacare is the sole owner of the ‘495 patent. The assignment has been recorded with the U.S. Patent and Trademark Office against the ‘495 patent at Reel/Frame 013896/0927.

12. Drive Medical has been infringing, is infringing, and unless enjoined, will continue to infringe the ‘495 patent by using, having used, offering to sell, selling, having sold, importing, and having imported the Accused Drive Medical Beds in the United States. The Accused Drive Medical Beds fall within the scope of one or more claims in the ‘495 patent. These actions therefore constitute direct infringement of the ‘495 patent.

13. Indeed, the Accused Drive Medical Beds are a direct copy of the ‘495 patent, as can be seen for example from the following comparison between Figure 7 of the ‘495 patent and the Accused Drive Medical Beds:



Each bed also includes a drive shaft 250/254, which drives a height adjustment mechanism that simultaneously raises or lowers the bed ends to a plurality of heights above the floor thereby raising or lowering the bed between the bed ends. As can be seen from the Drive Medical universal bed, it is identically configured to Figure 7, with "universal" bed ends at the head and foot of the bed.

14. Drive Medical is also actively inducing others to infringe the '495 patent, and is contributing to infringement of the '495 patent by others, through its actions in using, having used, offering to sell, selling, having sold, importing, having imported and marketing the Accused Drive Medical Beds in the United States.

15. Drive Medical has had at least constructive notice of Invacare's rights under the '495 patent by virtue of Invacare's universal bed products in the marketplace being marked with the '495 patent number.

16. Drive Medical's acts of infringement are willful, wanton, deliberate, without license, and with full knowledge and awareness of the '495 patent. As a result, Invacare has suffered and will continue to suffer irreparable harm, and this irreparable harm will continue unless Drive Medical's infringing activities are enjoined during this Action and thereafter.

17. The harm to Invacare within this judicial district and elsewhere in the United States resulting from the acts of infringement of the '495 patent by Drive Medical set forth above is irreparable, continuing, and not fully compensable by money damages.

18. Upon information and belief, Drive Medical has profited from and will continue to profit from its infringing activities. Invacare has been and will be damaged by Drive Medical's infringing activities. The amount of monetary damages which Invacare has suffered by the acts of Drive Medical set forth above cannot be determined without an accounting.

19. Drive Medical's willful infringing activities relating to the Accused Drive Medical Beds complained of herein make this an exceptional case entitling Invacare to the recovery of its reasonable attorneys' fees under 35 U.S.C. § 285 or other applicable law and the trebling of damages for willful infringement under 35 U.S.C. § 284.

**COUNT 2**  
**(Infringement of U.S. Patent No. 6,997,082)**

20. Invacare incorporates by reference all averments set forth in the paragraphs above as if fully rewritten herein.

21. On February 14, 2006, United States Patent No. 6,997,082 for “Adjustable Bed” (“the ‘082 patent”) was duly and legally issued by the U.S. Patent and Trademark Office. A true and correct copy of the ‘082 patent is attached hereto as Exhibit B. By assignment from the inventors in March and April of 2004, Invacare is the sole owner of the ‘082 patent. The assignment has been recorded against the ‘082 patent with the U.S. Patent and Trademark Office at Reel/Frame 015230/0397.

22. Drive Medical has been infringing, is infringing, and unless enjoined will continue to infringe the ‘082 patent by using, having used, offering to sell, selling, having sold, importing, and having imported the Accused Drive Medical Beds (as defined above) in the United States. The Accused Drive Medical Beds fall within the scope of one or more claims in the ‘082 patent. These actions therefore constitute direct infringement of the ‘082 patent.

23. Indeed, the Accused Drive Medical Beds are a direct copy of the ‘082 patent, as can be seen for example from the following comparison between Figure 22 of the ‘082 patent and the gearbox used in each of the Accused Drive Medical Beds: